BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2022

PRONOUNCED ON : 07.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.14189 of 2014

S.Pushpamani ... Petitioner

vs.

1.The Chairman,
TANGEDCO,
(Formerly Tamil Nadu Electricity Board),
NPKRR Maligai,
No.800, Anna Salai,
Chennai.

2.The Internal Audit Office,
Board Office Audit Branch,
NPKRR Maligai, First Floor,
No.800, Anna Salai,
Chennai.

3.The Internal Audit Officer,
Pension Audit Branch,
No.144, Anna Salai,
Chennai – 600 002.

4.The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO,
(Formerly Tamilnadu Electricity Board),
Sivagangai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent in LR.No.25360/283/F-14/F-143/2006/D. 266/2006, dated 21.06.2006 and consequential impugned order of the 3rd respondent in Lr.No.9302/269/F.8/F.81/2014, dated 26.02.2014 and to quash the same and consequently, to direct the respondents herein to disburse the dual family pension to the petitioner on the death of petitioner's husband K. Subramanian as a Watchman from the date of his death, together with interest at a nominal rate within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.S.Srinivasa Raghavan
For R1 and R4 : Mr.S.Arivalagan
For R2 and R3 : No appearance

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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the 2nd respondent passed in LR. No. 25360 / 283/F-14/F-143/2006/D.266/2006, dated 21.06.2006 and consequential impugned order of the 3rd respondent in Lr.No.9302/269/F.8/F.81/2014, dated

26.02.2014 and consequently, to direct the respondents herein to disburse the dual family pension to the petitioner on the death of petitioner's husband K. Subramanian as a Watchman from the date of his death, together with interest at a nominal rate within a reasonable time as may be fixed by this Court.

2.The brief facts of the case are that the petitioner's husband had served in the Indian Army as Soldier and was discharged on 30.06.1978. After the discharge, the petitioner's husband was appointed as Watchman in the Central Stores Office of Tamil Nadu Electricity Board at Sivagangai Distribution Circle. He retired from his service on attaining superannuation on 31.10.1998 and he died on 28.11.2005, leaving his wife, the petitioner herein and a son namely Saravanakumar and daughter namely Latha. The deceased employee was receiving family pension from the respondents in addition to the family pension that was paid to him by the Indian Army. Thus, the petitioner's husband was receiving dual pension, one from Indian Army and another from Electricity Board till his death. After the death of the employee, the respondent Electricity Board paid a sum of Rs.25,000/- only being the family security fund. The petitioner applied for family pension from the respondent Electricity Board and the respondents were not favourable to the petitioner in granting the family pension as per Rules. On 21.06.2006, the respondents had informed the petitioner that the petitioner have to obtain a confirmation report from the Controller of Defence Accounts stating that no family pension has been sanctioned by the Defence Department. The sum and substance of the contention of the respondent is that if the deceased family is receiving family pension from the Defence Department, then the deceased family is not entitled to family pension from the Electricity Board, since the same amounts to dual pension. The contention of the petitioner is that in view of the Circular of the Office of the Principal Controller of Defence Accounts (Pensions) Allahabad, dated 17.01.2013 (Circular No.504), according to which the families of Armed Force pensionaries who gets two family pensions, i.e., family pension (ordinary) from Military said in addition to family pension, if any authorized by re-employer for re-employed civil service subject to fulfillment of other prescribed conditions. Therefore, the proceedings of the second respondent, dated 21.06.2006, is illegal and unlawful and there is no embargo for receiving dual pension by the families of Armed Force pensionary. After the demise of the employee, the wife / writ petitioner submitted a representation for payment of dual pension on 05.03.2015, pursuant to the above circular. The third respondent has issued the impugned proceedings, dated 26.02.2014, simply returning the application stating that there are no Board proceedings from the second respondent so far in the implementation of the Circular No.564, dated 17.01.2013. Therefore, the petitioner submitted a representation on 10.04.2014 but the second respondent has not considered the same.

3. The contention of the petitioner is that the reasoning of the third respondent in the impugned order accounts to refusal even without clarifying with the first respondent in the light of Circular No.504, dated 17.01.2013. Hence, the petitioner has come up with this Writ Petition to grant pension from TANGEDCO.

4.The respondents have not filed any counter affidavit, but based on instructions submitted that the petitioner is not entitled to dual family pension, because the Tamil Nadu Government has not sanctioned the dual family pension to the employees, who are re-employed after discharged from the Army. When there are certain representations from the claimants, the Tamil Nadu Government accepted the claim and has declared on the floor of the legislature that they would be granted dual family pension. Thereafter, the Tamil Nadu Government has passed G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 05.04.2017. The first and fourth respondents TANGEDCO has adopted the said G.O. in (PER) CMD TANGEDCO Proceedings No.137, dated 27.05.2017, where it has been stated that the sanction of dual family pension would take effect from 02.09.2016.

5. Heard Mr.S.Srinivasa Raghavan, the learned Counsel for the petitioner and Mr.S.Arivalagan, the learned Counsel for the respondents and perused the records.

6. G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 05.04.2017 reads as under:

> *"4. After careful consideration, the Government has decided to accept the proposal of the Joint Director (i/c), Directorate of Ex-Servicemen's Welfare and accordingly order for the sanction of Dual Family Pension to those*

families of Ex-Servicemen who have been re-employed in Civil (i.e.) State Government Service and earned a pension out of the re-employment prior to -1.-3.2003 (i.e.) before the introduction of Contributory Pension Scheme, in addition to Military Family Pension already drawn by them.
5.This order shall take effect from 02.09.2016
6. Necessary amendment to Rule-49(13B) of Tamil Nadu Pension Rules, 1978 shall be issued by Finance (Pension) Department separately
7. This order issued with the concurrence of Finance Department vide its U.O. No. 15127 / Pension / 2017 dated 31.03.2017"

7. Following the G.O. Ms. No. 290, the TANGEDCO has issued the (PER) CMD TANGEDCO Proceedings No.137, dated 27.05.2017 reads as under:

*"**PROCEEDINGS:***

In the Government Order read above, orders have been issued sanctioning Dual Family Pension to those families to Ex-Servicemen who have been re-employed in Civil (i.e.) State Government Service and earned a pension out of the re-employment prior to 01.04.2003 (i.e.) before the introduction of Contributory Pension Scheme, in addition to Military Family Pension already drawn by them with effect from 02.09.2016. The said order has been considered and decided to adopt the said benefits to the Pensioners/Family Pensioners of TANGEDCO.

2.Accordingly, it is hereby ordered that Dual Family Pension be *sanctioned to those families of Ex-Servicemen who have been re-employed in Civil (i.e.) State Government Service, Tamil Nadu Generation and Distribution Corporation etc. and earned a pension out of the re-employment prior to 01.04.2003 (i.e.) before the introduction of Contributory Pension Scheme, in addition to Military Family Pension already drawn by them.*

3.This order shall take effect from 02.09.2016.

4.The receipt of these proceedings shall be acknowledge."

8. In the said G.O., it has been categorically stated that the G.O. would take effect from 02.09.2016, even though the policy was taken in the year 2017. Even the TANGEDCO has stated in the said proceedings that the sanction of dual family pension would take effect from 02.09.2016 onwards. The claim of the petitioner is that the petitioner is entitled to the dual family pension from the date of death of the employee, i.e., 28.11.2005. The contention of the respondents are that the petitioner is entitled to family pension from 02.09.2016 onwards but the issue raised in this Writ Petition is whether the petitioner is entitled to dual family pension from 28.11.2005 to 02.09.2016.

9. The petitioner relied on two judgments rendered by this Court in W.A.(MD)No.679 of 2014, dated 17.02.2017, passed in ***the Secretary to the Government and four others Vs. M.Alamelu.*** This Court has held that the husband of the petitioner retired from service and attained superannuation on 31.05.2004 and has been receiving both the pensions by giving option as per Rule 16(1)(b) of the Tamil Nadu Pension Rules. Hence, the petitioner cannot be denied dual family pension by the State on the ground that the petitioner was receiving family pension from Army. In other words, she is entitled to two family pensions one from Army and the other from the State government.

10. Following the above said order, an order dated 24.02.2020 was passed in W.P.No.35771 of 2019 filed by ***Savithri Vs. Principal Accountant General and four others***, wherein this Court has held that the petitioner is entitled to dual pension. There is a reference to another judgment rendered in ***Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam Vs. Government of Tamil Nadu and others.***

11.In W.A.(MD)No.679 of 2014, dated 17.02.2017, it has been observed as under:

> *"The learned Special Government Pleader appearing for the appellants contends that both kinds of family pension are not admissible in view of Sub-Rule 13-B of Rule 49 of the Tamil Nadu Pension Rules.*
> *2.We may note that Rule 49 itself deals with only family pension. Further, Sub Rule 13-B of Rule 48 was inserted by G.O.Ms.No.23, dated 06.01.1996. There appears, prima facie, some confusion arising over insertion of Sub Rule 13-B, when Sub Rule 14 continues to be in force.*
> *3.The learned Special Government Pleader appearing for the appellants seeks time to place the notification by which Sub Rule 13-B was inserted and also to obtain instructions as to what is the mischief which it was supposed to cure.*
> *4.List the matter on 28.01.2016."*
> *Though the appellants sought time to place the notification by which Sub-Rule (13-B) to Rule 49 was inserted, he has not produced any such notification."*

12. In the judgments it has been held that the Government was not able to produce materials to show under what circumstances the Rules 49(13A) and 49(13B) were inserted. And thereafter had proceeded to consider the claim of the

writ petitioner therein and allowed the claim of the writ petitioner.

13. On perusal of the Tamil Nadu Pension Rules, 1978 it is seen that the Rules were enacted and came into effect on 01.01.1979. Especially the Rule 49(14) came into effect from 01.01.1979 onwards. The Sub Rule 13B of Rule 49 was inserted through G.O.Ms.No.23, Finance (Pension) Department, dated 06.01.1996. In the said G.O. there is a reference to the notification of the Government of India, Department of P and PW Notification, dated 01.02.1985 and Pension Unity, dated 14.11.1985, published as S.O.No.5304 in the Gazette India, dated 30.01.1985. There is a reference to G.O.No.768 Finance (BG III), dated 21.08.1986. The said G.O.Ms.No. 23 is extracted hereunder:

GOVERNMENT OF TAMIL NADU
ABSTRACT
Pension – Tamil Nadu Pension Rules, 1978 – Amendment to Rule 49 - Orders issued.
FINANCE (PENSION) DEPARTMENT

G.O.Ms.No.23 *Dated 6th January, 1996.*
Yuva Margazhi 22,
Thiruvalluvar Aandu 2026.
Read:

Government of India, Department of P&PW Notification No.1/2/85 – Pension Unit dated 14.11.1985, published as S.O.No.5304 in the Gazette of India, dated 30-11-1985.
G.O.Ms.No.768, Finance (PG III), dated 21.08.1986.

ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

AMENDMENT:

In the said Rules, in rule 49, after sub-rule (13-A), the following sub-rule shall be inserted, namely:-

> *(13-A) Family pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefor under any other pension rules.*
>
> *Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule if he forgoes family pension admissible from any other rules.*

(BY ORDER OF THE GOVERNOR)

S. PITCHAI,

JOINT SECRETARY TO GOVERNMENT.

14. The amendment Sub Rule 13A of Rule 49 came into effect by passing G.O.Ms.No.22, Finance (Pension) Department, dated 06.01.1996 and there is a reference to the Government of India Notification No.1(65) P&PW/91 and Ministry of Personnel PG and Pensions (Department of Pension and P.W.), dated 19.05.1993, from the Accountant General (Accounts and Entitlements) Matters. 18. Letter No.Pr.AG(A & E) RMI/III/3-8/FP/1993-1994, P.527, dated 05.01.1994. The said G.O.Ms.No. 22 is extracted hereunder:

GOVERNMENT OF TAMIL NADU
ABSTRACT
Pension – Tamil Nadu Pension Rules, 1978 – Amendment to Rule 49 - Orders issued.
FINANCE (PENSION) DEPARTMENT

G.O.Ms.No.22 *Dated 6th January, 1996.*
Yuva Margazhi 22,
Thiruvalluvar Aandu 2026.
Read:

From the Government of India, Notification No.1(65) P&PW/91, Ministry of Personnel P.G. And Pensions (Department of Pension and P.W.) dated 19.5.1993.
From the Accountant General (Accounts & Entitlements) Madurai Letter No.Pr.AG (A&E) PMI/III/3-5/FP/93-94, P.527, dt. 5.1.1994.

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ORDER:

The following Notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Pension Rules, 1978.

AMENDMENT:

In the said Rules, in rule 49, after sub-rule 13, the following sub-rule shall be inserted, namely:-

"(13-A) A military pensioner, who on retirement from military service, on retiring pension, service pension, or invalid pension is governed for the grant of ordinary family pension under military rule; and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorised under military rules be governed as follows:-

(a) if he dies, while holding a civil post, his family shall be allowed family pension under this rule, or the family pension authorised at the time of retirement or discharge from the military service, whichever is more advantageous to the family.

(b) if he has an appointment to a civil service or post, opted to retain military pension for the past military service.

(i) and retires from the civil re-employment without earning any pension therefore, his family shall be entitled for family pension as authorised at the time of his retirement or discharge from the military service;

ii) retires from the civil re-employment after becoming eligible for pension therefore, he shall exercise an option at the time of applying for pension for the civil service either to be governed by family pension under this rule or to avail of family pension benefits, as authorised at the time of his retirement or discharge from the military service and such option once exercised shall be final.

(c) if on appointment to a civil service or post, he has opted to surrender military pension and count the military service for civil pension, his family shall be entitled to family pension under this rule."

(BY ORDER OF THE GOVERNOR)

S. PITCHAI,

JOINT SECRETARY TO GOVERNMENT.

15. From the above two G.O.'s it is evident that the Government of India has taken a policy decision regarding the issue of dual pension by these two notifications. Based on the said notifications, Tamil Nadu Government has amended the Tamil Nadu Pensions Rules, 1978 by inserting sub clause 13 A and 13 B which came into effect from 06.01.1996. From 06.01.1996 until 02.09.2016, i.e., the date of issue of G.O.Ms.No.290, Public (Ex Servicemen) Department, dated 05.04.2017, the prevailing Rule is Rule 49(13 A) and Rule 49(13 B).

16. Now, the question arises when there is an amendment by inserting

49(13A) and 49(13B), will the said rule override 49(14). If the answer is affirmative, then Rule 49(13A) and 49(13B) would become redundant. When there is a subsequent amendment, that has to be taken into account and while amending the Rule the government with its wisdom has amended the said rule.

17. When there is inconsistency in Rule 49(13A) and 49(13B) with Rule49(14), a comprehensive interpretation ought to be adopted.

18. Moreover, based on the policy decision of the Government of India, the dual pension was stopped and all the States have implemented the said policy decision. Since the Division Bench has stated that since the learned Special Government Pleader is not able to explain or has not produced any such notification, they had come to the conclusion that the petitioner is entitled to dual pension. However, in the present case, the respondents have produced the Government of India notification as well as the copies of G.O. Ms. No. 22 Finance (Pension) Department, dated 06.01.1996 and G.O. Ms. No. 23, Finance (Pension) Department, dated 06.01.1996.

19. Since there was an amendment to the Rule, this Court is of the considered opinion that the petitioner is not entitled to dual pension from 2005 to 2016. In fact, from the date of amendment, the family of the deceased employees are not entitled to family pension from 1996 to 2016. But the petitioner is entitled to dual pension from 2016 onwards. If the respondents have not disbursed any dual pension, from 2016 onwards, as per the proceedings, dated 27.05.2017, the respondents are directed to pay the sum to the petitioner. However, the petitioner is not entitled to family pension from 2005 to 2016.

20. The contention of the petitioner is that the judgments stated supra would lead to the unambiguous conclusion that the families of Ex-Servicemen will be entitled for dual pension from date of demise of the pensioner. However the respondents submitted that the petitioner is entitled to dual pension based on the G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016 only. The aforesaid Government Order has been issued based on the statement made by the Hon'ble Chief Minister of Tamil Nadu on the floor of the house on

02.09.2016, accepting Demand No.38, Public Department that dual pension must be paid to the families of pensioners by taking into account the military service as well as Civil service. Accepting the demand the State has relaxed the provisions of Rule 49(13-B) of the Rules and enable dual family pensions. The said G.O. specifically states that the G.O. shall take effect from 02.09.2016. The State Government while fixing the "effect date" had taken the financial implications and other parameters into account. There is no infirmities or preserve in fixing the effective date. Moreover it is the policy decision taken by the government to grant dual pension from the effective date and fixing the effective date is within the domain of the Stare Government. It is pertinent to note that the said G.O. Ms. No. 290 was not put to challenge in this writ petition. Therefore this Court is of the considered opinion that the petitioner is not entitled to the dual pension.

21. However the petitioner is at liberty to submit a representation to the Government of Tamil Nadu on this issue. Since it is a beneficial legislation, the Government may consider the claim of the petitioner and similarly placed persons. The Government may consider to extend the dual pension by amending

the rules if it is financially viable to the government. The government shall consider the representation and pass orders within a period of twelve weeks from the date of receipt of the copy of the order.

22. With the above observation, the Writ Petition is dismissed. No costs.

Index : Yes / No
Internet : Yes

07.07.2022

Tmg

S.SRIMATHY, J

Tmg

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

Order made in
W.P.(MD)No.14189 of 2014

07.07.2022